

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

DOCKET NO.
VGOB 05-0816-1485

IN RE:

Appeal of the Virginia Division of Gas and Oil Director's Decision IFFC 17105 dated June 15, 2005 (hereinafter the "Decision") in the matter of Island Creek Coal Company, coal owner (Hereinafter "Island Creek"), vs. EOG Resources, Inc. (hereinafter "EOG"), Proposed Well Big Vein #11-05 (hereinafter "Proposed Well").

FINDINGS AND ORDER

This cause came on for hearing before the Virginia Gas and Oil Board ("Board") on the 16th day of August, 2005, upon EOG's Petition for Appeal of the Director's Decision IFFC 17105 dated May 3, 2005 which found and held that the location of the proposed well is within 2500 feet of at least one existing well and, because no alternate locations were agreeable to Island Creek, the Code of Virginia, § 45.1-361.12.A, requires that the permit be refused.

Timothy E. Scott, Esq. appeared at the hearing as Counsel for EOG; Mark Swartz, Esq. Appeared for Island Creek; Sharon M. B. Pigeon, Assistant Attorney General, was present to advise the Board.

History of Proceedings

1. On April 13, 2005, EOG filed with the Virginia Department of Mines, Minerals and Energy, Division of Gas and Oil ("DGO"), its application for proposed operations named Big Vein #11-05
2. On April 27, 2005 DGO received Coal Owner objections pursuant to § 45.1-361.12.A from Island Creek, identified in the permit applications as coal owner of tracts to be affected by the proposed operations.
3. As required by § 45.1-361.35.H, the Director of the Division of Gas and Oil ("Director") scheduled an Informal Fact Finding Conference (IFFC) for May 17, 2005. Notice was given to EOG, Island Creek and to every person with standing to object as prescribed by § 45.1-361.30.
4. IFFC 17105 was convened at the time and place indicated in notice.

5. Because no agreement between EOG and Island Creek was obtained at the Conference, the Director issued his decision on June 15, 2005 under requirements of §45.1-361.35.I.

6. On June 22, 2005, EOG filed, pursuant to §§ 45.1-361.23 and 45.1-361.36 of the Virginia Gas and Oil Act, its Petition for Appeal of the Director's Decision citing errors in the Director's decision and the Director's failure to consider provisions of § 45.1-361.11, and seeking the following relief from the Board pursuant to Virginia Code Ann. §§ 45.1-361.1 et seq. and any regulations promulgated pursuant to law:

- a. Reversal of the Decision of the Director.
- b. Instruction of the Director to grant the permit for the referenced well.

Findings of Fact

1. Island Creek Coal Company is a lessee and, under definitions in § 45.1-361.1 of the Virginia Gas and Oil Act, a Coal Owner of coals in the drilling unit to be served by the Proposed Well.

2. The Proposed Well is within 2500 feet of an existing gas well.

3. There are no alternate gas well locations within the drilling unit that are acceptable to Island Creek Coal Company.

4. EOG Resources, Inc. has obtained voluntary leases of gas rights totaling 96.1% of the 112.69-acre unit to be served by well #11-05. The Board pooled remaining interests at its April, 2005 hearing.

Conclusions of Law

In considering the provisions of § 45.1-361.12, Code of Virginia, 1950 as amended, The Board finds:

a. Invocation of the "coal owner veto" established by § 45.1-361.12.A does not require first consideration of the multiple mine safety concerns contained in § 45.1-361.11.B or the alternate well location and drilling schedule aspects of § 45.1-361.11.C. Consideration of these aspects are appropriate when alternate locations and drilling plans are available and under discussion. Because the Coal Owner specifically stated that no alternate locations would be acceptable, consideration of the provisions of § 45.1-361.11 would be superfluous.

b. The exemptions to § 45.1-361.12.A contained in § 45.1-361.12.B are not applicable because the Proposed Well is not to be "...drilled through an existing or planned pillar of coal required for protection of a preexisting well..."

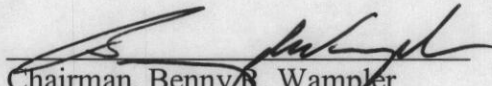
c. The plain language of § 45.1-361.12.A states as follows:

If the well operator and the objecting coal owners present or represented at the hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.

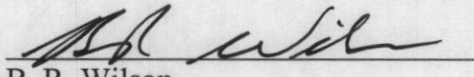
The Proposed Well is within 2500 feet of existing wells and is unacceptable to Island Creek. There are no alternate locations that are acceptable to Island Creek. Under provisions of § 45.1-361.12.A the permits must be refused.

Accordingly, this Board affirms the Director's decision IFFC number 17105, a copy of which is attached hereto and incorporated as part of this Order as though fully set out herein.

DONE AND EXECUTED this 12th day of September, 2005, by a majority of the Virginia Gas and Oil Board.

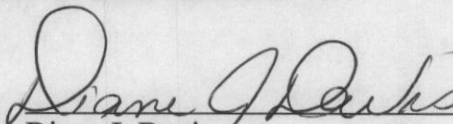

Chairman, Benny R. Wampler

DONE AND PERFORMED this 12th day of September, 2005, by an Order of this Board.

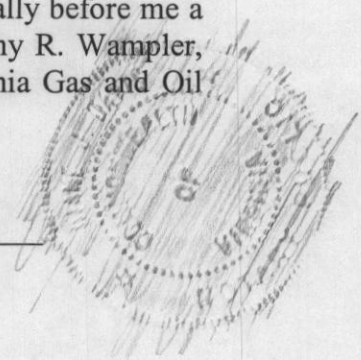

B. R. Wilson
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF Washington)

Acknowledged on this 12th day of September, 2005, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Diane J. Davis
Notary Public

My Commission expires: 9/30/05

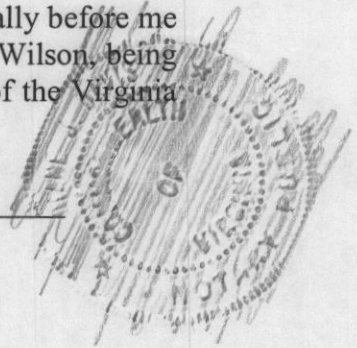


COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 12th day of September, 2005, personally before me a notary public in and for the Commonwealth of Virginia, appeared B. R. Wilson, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

Diane J. Davis
Diane J. Davis
Notary Public

My commission expires: 9/30/05



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B. R. Wilson, Director, Division of Gas and Oil

By Decision of the
Director, Division of Gas and Oil

Informal Fact Finding Conference 17105 (Herein "IFFC 17105")

CNX Gas Company, LLC
(Herein "Gas Owner")
And
Island Creek Coal Company
(Herein "Coal Owner")

vs.

EOG Resources, Inc.
(Herein "Permit Applicant")

RE: Permit Application for Gas and Oil operations:
Application 7908, Operations Name Big Vein #11-
(Herein "Application")

Background

On April 13, 2005, the Division of Gas and Oil (DGO) received applications for permit from EOG Resources, Inc. (EOG) for gas operations named Big Vein #11-05. On April 27, 2005 the Division received Gas Owner objections from CNX Gas Company, LLC, identified in the permit application as gas owners of tracts affected by the operations, and Coal Owner objections from Island Creek Coal Company, identified in the permit application as Coal Owners of tracts to be affected by the operations. All objections were considered to be timely and appropriate.

Objections filed by the Gas Owner against the permit application for EOG Resources, Inc. gas operations Big Vein #11-05 under § 45.1-361.35.A are:

1. *The permit sought, if granted, would directly impinge on CNX's gas interests, and;*
2. *The permit sought, if granted, would violate or impair CNX's property or statutory rights aside from its contractual rights.*

The Gas Owners' objections were deemed acceptable under § 45.1-361.35.A.

Objections filed by Island Creek Coal Company against the permit applications for EOG Resources, Inc. gas operations Big Vein #11-05 in accordance with § 45.1-361.12.A are as follows:

If the well operator and the objecting coal owners present or represented at the hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.

The Coal Owners' objections were deemed acceptable under § 45.1-361.35.A.

Hearing Date and Place

IFFC 17105 was convened on Tuesday May 17, 2005 in the conference room of the Division of Gas and Oil, 230 Charwood Drive, Abingdon, Virginia. All parties with standing to object to Permit Application 7908 were notified of the time and place by United States certified mail, return receipt requested.

Appearances:

Peter Bacon appeared on behalf of Permit Applicant with counsel Tim Scott. Les Arrington and Anita Duty appeared on behalf of Coal Owner and the Gas Owner with counsel Mark Swartz.

Findings of Fact:

1. In accordance with § 45.1-361.35.H, notice of IFFC 17105 was given to the Permit Applicant and to every person with standing to object as prescribed by §45.1-361.30.
2. IFFC 17105 was convened at the time and place indicated in notice.
3. CNX Gas Company, LLC was notified as gas owner of properties to be affected by the proposed operations and, as such, has standing to object to the proposed operations.
4. Island Creek Coal Company was notified as coal owner of properties to be affected by the proposed operations and, as such, has standing to object to the proposed operations.
5. There are existing wells within 2500' of the proposed EOG well.
6. According to Virginia Gas and Oil Board documents, EOG Resources, Inc. has obtained voluntary leases of gas rights totaling 96.1% of the 112.69-acre unit to be served by well #11-05. The Board pooled remaining interests at its April, 2005 hearing.

Controlling Law and Regulation

1. Sections 45.1-361.30.A(1 & 6) of the Virginia Gas and Oil Act require that permit applicants notify all coal owners on the tract to be drilled and all coal owners within 500' of the proposed gas well location.
2. Section 45.1-361.30.A(4) of the Virginia Gas and Oil Act requires that permit applicants notify all gas owners within the unit served by the proposed gas well.
3. Section 45.1-361.30.D gives standing to object to permit applications to all parties receiving required notice.
4. Section 45.1-365.11 details safety aspects that must be considered when hearing coal owner objections to gas well permit applications.

5. Section 45.1-361.12.A specifies distance between wells within which, if no alternative location is agreeable, the permit must be denied.

6. Section 45.1-361.35.H requires the Director to schedule an informal fact finding hearing concerning objections, and provide notice of the hearing to all parties with standing to object to the permit.

7. Section 45.1-361.35.I requires the Director to issue a decision regarding the objection if the parties to the hearing fail to reach an agreement.

Decision of the Director

Gas Owner objections, as originally filed, included surface use objections alleging unreasonable infringement on the Gas owner's exclusive use of the surface. These objections were denied without hearing because the Gas Owner is not identified as being a surface owner in the Permit Application thus does not have standing to object as such. Section 45.1-361.1 of the Virginia Gas and Oil Act states that surface owner means any person who is the owner of record of the surface. Under this definition, standing to object as a surface owner does not appear to extend to those who lease, rent or otherwise have obtained rights to use surface property but do not actually own it.

In the matter of Gas Owner objections filed under 45.1-361.35.A: *The permit sought, if granted, would directly impinge on CNX's gas interests, and; The permit sought, if granted, would violate or impair CNX's property or statutory rights aside from its contractual rights.* The Gas Owner testified that lease terms under which it operates gives it exclusive rights to use the surface. A portion of the lease was presented as evidence. In rebuttal, the Permit Applicant presented testimony and evidence that the lease terms under which it operates are nearly identical to those of Gas Owner in that the lease gives Permit Applicant exclusive rights to develop its gas resources and the right to use the surface in the process. While it is not within the purview of the Division of Gas and Oil to interpret or enforce lease terms, it appears that the exclusivity clauses in both leases refer to development of gas resources, with Gas Owner having exclusive rights to develop coalbed methane resources and Permit Applicant having exclusive rights to develop conventional gas resources, and that both operators have the right to use the surface in order to pursue development. Because no additional testimony was given that demonstrated how Permit Applicant's proposed operations will impinge on Gas Owner's gas interests or property rights, and because disputes regarding leases or other contractual matters are the province of the court system, the Gas Owner objections are denied.

In the matter of Coal Owner objections filed in accordance with 45.1-361.12.A: *If the well operator and the objecting coal owners present or represented at the hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.* The Coal Owner representative raised no issues other than the fact that the proposed EOG well would be within 2500' of existing or previously permitted gas wells. Plats submitted with the applications verify that fact. In testimony given at the hearing, the Coal Owner representative stated that there are no acceptable alternate locations.

Section 45.1-361.12.A is very straightforward and unequivocal. It does not require the objecting coal owner to provide explanation or justification, and does not allow for any discretion on the part of the Director. Simply put, the statute requires that, in the absence of an agreement between the Coal Owner and the Applicant regarding a well location within 2500' of any existing well, the permit shall be denied.

Based on the requirements of Section 45.1-361.12.A of the Virginia Gas and Oil Act, it is, therefore, the decision of the Director to deny the permit for well Big Vein #11-05 (application # 7908).